

14373. Misbranding of Bowman's abortion remedy. U. S. v. 100 Boxes of Bowman's Abortion Remedy. Tried to the court. Judgment for the Government. Decree of condemnation and destruction entered. (F. & D. No. 20567. I. S. No. 9619-v. S. No. C-4855.)

On November 6, 1925, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 100 boxes of Bowman's abortion remedy, at Ravenna, Ohio, alleging that the article had been shipped by the Erick Bowman Remedy Co., Owatonna, Minn., on or about September 22, 1925, and transported from the State of Minnesota into the State of Ohio, and charging misbranding in violation of the food and drugs act as amended. The article was labeled in part: "Bowman's Abortion Remedy. This Package contains one 9½ pounds treatment of Bowman's Abortion Remedy. Read the directions carefully before administering." A more complete description of the manner of labeling the product is hereinafter set forth in the opinion of the court.

Analysis by the Bureau of Chemistry of this department of a sample of the article showed that it consisted essentially of brown sugar and a ground wheat product.

It was alleged in the libel that the article was misbranded, in that the above quoted statements, regarding the curative or therapeutic effect of the article, were false and fraudulent, since it contained no ingredient or substance capable of producing the effect claimed.

On May 5, 1926, the Erick Bowman Remedy Co., Inc., Owatonna, Minn., having appeared as claimant for the property, the case came on for trial before the court. After the submission of evidence and arguments by counsel judgment was entered for the Government as will more fully and at large appear from the following opinion of the court (Jones, D. J.):

"The libel in this case is filed under act of Congress of June 30, 1906, known as the food and drugs act, against 100 boxes of Bowman's abortion remedy. The Erick Bowman Remedy Company, Inc., of Owatonna, Minn., has intervened as claimant and makes defense. Condemnation is sought on the ground that these boxes of Bowman's abortion remedy are misbranded, contrary to and in violation of section 8, paragraph 3 under drugs, of said food and drugs act. The jury being waived by written stipulation of the parties, the case was tried to the court.

"A motion for continuance of this case was filed by claimant on the day of trial. This motion was overruled. Further motion was made by the claimant for leave to withdraw the intervening petition, and to permit a default decree to be entered. On representation of the United States attorney that the Government was ready for trial and had procured a number of witnesses from different parts of the country at considerable expense, and that the Department of Agriculture was particularly desirous of having this case heard on its merits, this motion was also overruled. The claimant raised two principal questions during the trial and at the close of the Government's case. First, that there was no misbranding within the meaning of the act; second, that the so-called Bowman's abortion remedy, sought to be condemned, was not a false and fraudulent substance, under section 3 in the case of drugs.

"The portion of the act which defines misbranding is as follows:

"The term 'misbranded' as used herein shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

"That for the purposes of this act an article shall also be deemed to be misbranded:

"In case of drugs:

"Third. If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent."

"Claimant admitted the allegation as to interstate shipment at the outset of the case, and no evidence was adduced on this point.

"The Government introduced a number of exhibits taken from the shipment in question. The boxes or cartons containing the Bowman's abortion

remedy contained two individual paste board packages each. These individual paste board packages were wrapped in light yellow paper. Three sides were pasted to the package, and the fourth side was not pasted. Under this side, which would of necessity be torn open by the consumer, appear the directions for the use of the so-called Bowman's abortion remedy. Under the flap at the top appeared the printed statement 'Bowmans Abortion Remedy. This package contains one 9½ pounds treatment of Bowman's Abortion Remedy. Read the directions carefully before administering.' A copy of a pamphlet sent out by the Bowman Company to the dealer in this case, was also introduced. This pamphlet was designated as 'Bowman's Bulletin,' and was a form of collateral advertising matter sent interstate to agents or customers by the Bowman Remedy Company. In this pamphlet the statement was made that the directions for use of the remedy would be found inside the package. On this evidence the court finds that the printing and labeling are a branding within the meaning of the act, which reads 'If the package or label shall bear or contain any statement, etc.' The effort to conceal the label by wrapping in light yellow paper is clearly and patently an effort to circumvent the law. It is in the opinion of the court a subterfuge. If anything, it is evidence to be considered in connection with the latter portion of paragraph 3, section 8 of the act, to wit, that it is 'false and fraudulent.'

"Any product of this nature, which is in truth a remedy for contagious abortion in cattle, would not have to be concealed and shipped in secret.

"The remedy itself has to do with what is known as contagious abortion in cattle. This is a serious disease, one which live stock dealers and veterinarians have been contending with for a long period of time. The disease is caused by infection in cattle by microorganisms. It is highly contagious, and may be transmitted in a number of ways. The germ apparently attacks the uterus at a point where nourishment passes to the fetus, with the result that this portion of the anatomy is destroyed. When the passage of food to the unborn calf is stopped, the fetus dies, and is thereupon expelled, as a natural process of nature. Specimens and exhibits clearly indicating this process were exhibited by the Government. It was shown that no remedy, medicine or drug taken by the cow in the ordinary manner into the stomach could in any possible way reach the source of the trouble, or have any effect upon the germ. This fact was testified to by any number of specialists and veterinarians.

"The analysis of the so-called abortion remedy indicates that it is composed of 85 per cent brown sugar and 15 per cent wheat. No trace of any chemical or drugs was found in the remedy. No evidence was introduced by the claimant controverting this testimony. The Government experts were of the unanimous opinion that no possible combination of these two substances would have any effect upon the disease. It must therefore be concluded that the remedy is false and fraudulent, and is a pure deception upon the farmer. Expert testimony was introduced by the Government to the effect that a number of tests had been made on Government owned cattle. All indicate clearly and conclusively that Bowman's abortion remedy neither prevented the disease, cured it after inception, or in any manner retarded its effect. Germs of the disease placed in a strong solution of Bowman's abortion remedy, thrived, prospered and multiplied without any check whatsoever.

"The subject of misbranding is treated by the following authorities:

"U. S. *vs.* 95 Barrels Apple Cider Vinegar, 265 U. S. 438.

"U. S. *vs.* Oil of Wintergreen, 268 Fed. 866.

"U. S. *vs.* Hog Food, 276 Fed. 34.

"U. S. *vs.* Tea & Spice Co., 286 Fed. 475 (6 C. C. A.).

"Goodwin *vs.* U. S. (6 C. C. A.) 2 Fed. (2nd) 200.

"Judgment of condemnation will be entered with costs against claimant."

A decree of the court was thereupon entered, condemning the product and ordering its destruction by the United States marshal.

W. M. JARDINE, *Secretary of Agriculture.*

14374. Misbranding of butter. U. S. v. 11 Cases and 9 Cases of Butter. Decree entered, adjudging the product misbranded and ordering its release under bond. (F. & D. No. 19922. I. S. Nos. 9759-v, 9760-v. S. No. C-4676.)

On February 27, 1925, the United States attorney for the Southern District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 20 cases of butter, at Mobile, Ala., alleging that the article